

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2307 OF 2006

1. Koloverly Welfare Association
duly registered under the Bombay
Public Trusts Act, Mumbai No.F-12259B,
through its Secretary, Opposite
St. Roqjues Shrine, Koloverly Vilage
Kalina, Santacruz (E),
Mumbai-400 098 & 17 Ors. ...Petitioners.
Vs.
1. Bombay Municipal Corporation,
Mahapalika Building, Mahapalika
Marg, Mumbai through
Commissioner & Ors. ...Respondents.

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Mr. S.S. Kulkarni for the Petitioners.
Mr. K. K. Singhvi with Ms. A.K. Savla for Respondent No.1 and 2.
Mr. P. G. Lad for Respondent No.3.
Mr. Pradeep Jadhav, AGP for Respondent Nos.4 and 5.

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**CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.**
Judgment reserved on : 15th October 2007.
Judgment pronounced on : 23rd October 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.) :

Rule, by consent of Counsel returnable forthwith. Counsel
appearing on behalf of the Respondents waive service. By consent of
Counsel and at their request taken up for hearing and final disposal.

2. Petitioner No.1 is an association which claims to represent the inhabitants of Koloveri Village Gaothan and Koliwada. The subject matter of this petition is a plot of land admeasuring 7 ½ acres comprised in CTS 6544 situated at Kalina, Santacruz (East). This plot of land, according to the Petitioners, was originally a natural pond and there is stated to be a natural drain flowing from the pond to the Mithi river. There is an averment in the petition to the effect that CTS 6544 is described as a pond in the City Survey record and in the village map as well. The grievance of the Petitioner is that on 26th July 2005, when the city faced a serious problem of water logging, the residents of village Koloveri at Kalina suffered from an acute problem when the entire area was flooded. The Petitioners are aggrieved by the decision of the Planning Authority to convert what is stated to be a natural pond and a natural drainage system into a reservation for the purposes of a recreation ground. The correspondence exchanged with the authorities is annexed to the petition. The allotment made in favour of the Third Respondent is sought to be challenged. The Petitioners seek a direction to the Municipal Corporation and the State

Government to restore the land to its original position by bringing back the natural drainage system into its original position by connecting it to the Mithi river.

3. The Third Respondent is a body by the name of Kalina Recreation and Sports Club. According to the Third Respondent, the litigation instituted by the Petitioner is not bona fide since the Petitioner was trying to obtain allotment of CTS 6544 for its use. The Third Respondent states that the Development Plan shows that there is a road surrounding the property in dispute and the property itself is developed from all sides. In the circumstances, it has been denied that there is a connection whatsoever between the alleged land and Mithi river. The residents of the area came together to form an association namely, the Third Respondent, for the development of recreation and sports. The Third Respondent had approached the Municipal Corporation in July 1995 for the allotment of the land which is reserved in part for a playground in the sanctioned development plan, while the rest was reserved for a Municipal School and a Cemetery. On 31st December 2002, 50% of the property has been

allotted to the Third Respondent.

4. The Municipal Corporation has filed several affidavits in these proceedings. In the first affidavit of the Deputy Municipal Commissioner (Zone III), it has been stated that as far back as in the sanctioned development plan for H East Ward of 1967, the land was reserved for the purpose of a playground. On 28th July 1976, the then Municipal Commissioner had requested the Secretary, Urban Development Department of the State Government to hand over the land to the Municipal Corporation. The Municipal Commissioner had instructed the then Ward Officer to commence filling up of the tank land in anticipation of Government orders and the filling up of the land was stated to have been carried out gradually thereafter. At present, it is stated, the plot comprises of an “existing ground” which has nothing to do with the Mithi river. The Court has been informed that land admeasuring 7 acres 20 gunthas, the tank land, belonging to the State Government came to be granted by the Additional Collector (Bombay Suburban District) to the Municipal Corporation on 9th November 1977 under Rule 5 of the Maharashtra Land Revenue

Rules, 1971, for the purposes of a playground. In the revised development plan of H East Ward which was sanctioned by the State Government in 1992, the land had been partly reserved for the public purpose of playground and the remaining portion was designated for a Municipal School and cemetery.

5. In pursuance of an order passed by this Court on 21st April 2007, the Municipal Corporation has filed a further affidavit dated 4th July 2007 placing on the record a Project Report for developing the playground and the drainage system of Kalina Tank and Kunchi Kurve Village in H East Ward. The Project Report takes note of the fact that the land comprised in CTS 6455 (part) admeasuring 30,351 sq.mtrs. is reserved for a Municipal Primary School, Cemetery and Playground in the sanctioned development plan. The Municipal Primary School has been developed on an area admeasuring 4602 sq.mtrs., a garden has been developed on 2471 sq.mtrs. while the remaining area comprising of 23,278 sq. mtrs. is reserved for a playground and 3799 sq. mtrs. is reserved for a cemetery which is yet to be developed. Under the orders of the Municipal Commissioner, dated 16th October

2003, 50% of the area is to be allotted to the Third Respondent for development and maintenance while the balance will be retained by the Municipal Corporation for development. An exact demarcation, it has been stated, will be carried out before the reservations are developed. Storm water drains are stated to be existing around the Kalina Tank land on the North, East and Western sides. On the Southern side of the land, a slum called Kunchi Kurve Nagar exists and all storm water coming from the area is discharged in the Resham Singh Nalla. The Nalla, it is stated, was recently widened to an average width of between 2 and 3 meters and was cleaned upto the Mithi river. It has also been proposed to provide a storm water drain along the southern boundary of Kalina Tank and the appropriate budgetary provision would be made. A plan has been annexed to the affidavit.

6. In a further affidavit dated 27th September 2007, the Municipal Corporation has stated that in pursuance of the orders of this Court, the site was jointly inspected by the Petitioner together with the Executive Engineer (SWD) and an Assistant Commissioner of H

East Ward. After inspection, it has been decided to change the direction of the flow of storm water drain along Church Road and to ultimately connect with the Resham Singh Nalla by providing a 750 mm pipe drain. The said arrangement, it has been stated before the Court, is to prevent water logging. It has also been stated that the work of draining Resham Singh Nalla was completed on 10th May 2007 and no flooding was observed in the last monsoon at Kunchi Kurve Nagar. The storm water drain from Point "C" in the Map upto Resham Singh Nalla has been cleaned after inspection on 12th and 13th September 2007.

7. The affidavits before the Court of the Municipal Corporation, as noted above, have been filed in pursuance of several directions issued on 10th April 2007, 24th April 2007 and 14th August 2007. The petition has served an important purpose of highlighting the difficulties faced by the residents as a result of the flooding which was caused during the monsoon, particularly in July 2005. The Municipal Corporation has placed on the record, the steps which have been taken to ensure that these problems do not arise in the future. While

recording the steps taken as stated before the Court, this Court would also find it necessary to direct the Municipal authorities to take all necessary and proper steps along the line suggested in the affidavits to obviate the occurrence of civic problems of the nature that have arisen in the past in the area. We direct that all necessary steps should accordingly be taken as agreed before the Court.

8. The wider relief that has been sought in the petition of restoring the land to the position which obtained perhaps a century ago or more cannot be granted at this stage. The material before the Court would indicate that as far back as in 1967 when the development plan was sanctioned, the land came to be reserved for a playground. The land was allotted to the Municipal Corporation by the State Government. In the year 1992 when the revised development plan was sanctioned by the State Government, the land has been reserved partly for a playground and partly for a Municipal School and cemetery. The Municipal School, the Court has been informed, does already exist. It is abundantly clear from the material before the Court that the surrounding area is also completely

developed. It would not be realistic or for that matter lawful to retrace the steps which have been undertaken in the course of planning process since 1967 under the Maharashtra Regional and Town Planning Act, 1966.

9. This petition will stand disposed of with the direction that the Municipal Corporation shall take all necessary and proper steps in terms of the affidavit filed before this Court to ensure proper maintenance of the storm water drains/Nallas to avoid the problems which resulted in the past in the course of the monsoon rains. The Court has been assured in the Project Report placed on the record with the affidavit dated 4th July 2007 and in a further affidavit dated 27th September 2007 filed on behalf of the Municipal Corporation that necessary steps would be taken as indicated therein. The petition shall accordingly stand disposed of. In the circumstances, there shall be no order as to costs.

CHIEF JUSTICE

